

7.40 Probation Revocation Flowchart

Arraignment

1. Ensure that probationer receives written notice of alleged violation(s). Determine whether probationer has been given notice sufficiently in advance of the proceedings to afford a reasonable opportunity to prepare.
2. Advise probationer of rights to attorney, contested hearing, and release from jail if hearing is not conducted in 14 days.
3. If probationer is unrepresented, appoint counsel if probationer is indigent, or obtain waiver.
4. Advise probationer of maximum possible sentence.
5. Ask probationer how he or she pleads.
6. If probationer pleads guilty, proceed to take guilty plea.
7. If probationer pleads not guilty, set a reasonably prompt hearing date. If probationer is being held in custody, hearing should be set within 14 days of arraignment, or court may delay revocation proceedings to await the outcome of related criminal proceedings.
8. Set or deny bail.

Guilty Plea

1. Advise probationer that by pleading guilty he or she is giving up the right to a contested hearing.
2. Advise probationer of right to counsel. If probationer is unrepresented, advise probationer that by pleading guilty he or she is giving up the right to counsel.
3. Advise probationer of charged violation(s).
4. Advise probationer of maximum possible jail or prison sentence.
5. Ask probationer how he or she pleads.

Begin here if guilty plea immediately follows arraignment.

6. Establish factual support for plea.
7. Determine that plea is understandingly, voluntarily, and knowingly made.
8. Accept or reject plea.
9. If a prison sentence is possible, refer to probation department for updated presentence report.
10. Set, continue, or deny bail.

Contested Hearing

1. If probationer is unrepresented, advise probationer of right to counsel. Appoint counsel if probationer is indigent, or obtain waiver.
2. Hear evidence and make findings of fact.
3. Determine whether violation has been established by preponderance of the evidence.
4. If probationer is found guilty and a prison sentence is possible, refer to probation department for updated presentence report.

Sentencing

1. If probationer is unrepresented, advise probationer of right to counsel. Appoint counsel if probationer is indigent, or obtain waiver.

Begin here if sentencing immediately follows guilty plea or hearing.

2. Give probationer, defense attorney, and prosecutor opportunity to read and discuss presentence report.
3. Give the parties an opportunity to explain or challenge information in PSIR. Make findings if the court will consider the challenged information when imposing sentence.
4. If present, give the victim an opportunity to deliver an impact statement.
5. If probation is revoked, impose sentence, stating minimum and maximum sentence, and giving credit for time served.
6. Advise probationer of right to appeal or file application for leave to appeal.